IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R.No. 1829 of 2007
Date of decision : 4.4.2007

United India Insurance Company Ltd. & Ors.

...Petitioners.

Versus

M/s Geeta Threads Ltd.

...Respondent.

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr.V.M. Gupta, Advocate
for the petitioners.

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VINOD K. SHARMA, J. (ORAL)

The present revision petition has been filed against the order dated 3.2.2007 passed by the learned Addl. Civil Judge (Sr. Divn.), Barnala dismissing an application moved by the petitioner defendant under Order 6 Rule 17 C.P.C. for amendment of the written statement.

By way of amendment the petitioner sought to amend the written statement by inserting following sub para at the end of para 4 and amending paras No. 9 & 10, which read as under :

> "It is further submitted that as per the provisions of the Insurance Act, 1938, part-II-B, deals with the establishment of Tariff Advisory Committee to control and regulate the rates, advantages, terms and conditions that may be offered by insurance companies in respect of general insurance business. In pursuance thereof, said Tariff Advisory Committee has laid

down rules, regulations, rates, advantages, terms and conditions for fire insurance, which are effective from 31.03.2001 and supersedes all earlier fire tariff. As per section 1 of the said tariff, only standard fire and special perils policy with the permitted 'Add-on' covers if any, can be issued. Even the wording of the said standard fire and special perils policy has been mentioned in section -II of the said tariff. It also lays down that add on covers as appearing in Section VIII can also be issued along with standard fire and special perils policy has been mentioned in section -II of the said tariff. It also lays down that add on covers as appearing in Section VIII can also be issued along with standard fire and special perils policy. Further Annexure A envisages that six type of Add-on covers which are (i) agreed bank clause (ii) contract price insurance clause (iii) designation of property clause (iv) reinstatement value policies (v) local authorities clause and (vi) escalation clause can be attached to the standard fire and special perils policy. Further these policies can be attached to the standard fire and special perils policy by adding the language of the particular add-on cover clause with the standard fire and special perils form of policy. In the present case though plaintiff company availed only one add-on cover policy i.e. Agreed Bank Clause, the endorsement of the same was made on the cover notes and insurance policies issued to the plaintiff company.

Para No. 9. That the contents of para No.9 of the plaint are admitted to the extent that said Sh. O.P. Aggarwal conducted the spot investigation by joining into investigation the MD of the plaintiff company and its employees. It is also admitted that said surveyor checked the records as narrated in para No.9 of the plaint. However, it is submitted that apart from the above, said surveyor has also checked other records supplied by the plaintiff company as sale and purchase registers, valuation report of Engineers with regard to valuation of building, plant and machinery, trading account for the year 01.04.2004 to 12.01.2005, audited balance sheets for last three years, schedule of fixed assets forming part of balance sheet since 1996, trial balance etc. However, rest of the para with regard to the damage observed by the surveyor is denied. Said surveyor has submitted his detailed report after observing the loss suffered by plaintiff company and the amount of loss suffered as reported by the surveyor which was as per the terms and conditions of the policies was paid to the plaintiff company on 13.09.2005.

Para No. 10. That the contents of para No. 10 of the plaint as alleged are wrong and hence denied. It is further submitted that surveyor had given the detailed and technical report of the loss suffered by the plaintiff company in terms of the terms and conditions of the insurance policies and said amount of loss as

assessed by the surveyor was paid to the plaintiff company. It is further submitted that the said surveyor has calculated the loss by taking the value of the respective properties, year of their ac`quisition, depreciation etc. and that the value of the machinery etc. as calculated by the plaintiff after reducing its depreciation is not correct."

It was claimed that the amendment would not change the nature of the suit and was necessary for just and proper adjudication of the case.

The application was contested by the plaintiff-respondent on the plea that by way of present amendment entirely different and new case was being set up to displace the claim of the petitioner. It was asserted that the admission made by the defendants is sought to be withdrawn. The other averments made were also denied.

The learned Courts below rejected the application primarily on the ground that by way of amendment entirely a new case is sought to be set up to displace the claim of the plaintiff and the admissions made were sought to be withdrawn. Be that as it may, the learned courts below noticed that the amendment sought is not of the nature which was not within the knowledge of the petitioner at the time of filing of the written statement. The trial has already commenced as the plaintiff has already completed his evidence and the case is fixed for defendant's evidence. In view of proviso to order 6 Rule 17 C.P.C. the amendment sought cannot be allowed after the commencement of trial qua the facts which were within the knowledge of the party at the time of filing pleadings or which could be found out with due diligence.

There is no merit in the present revision petition and accordingly the same is dismissed.

4.4.2007 **(VINOD K. SHARMA)**
'sp' **JUDGE**